

## **ARTICLE 23**

### **ADMINISTRATION AND INTERPRETATION**

#### **SECTION 23 -1. ENFORCEMENT.**

- 23-1-1        **ENFORCEMENT.** The provisions of this Ordinance shall be administered and enforced by an officer to be known as the Zoning Administrator, who shall be appointed by the City Council of the City of Winchester. The Zoning Administrator shall have all necessary authority on behalf of the Governing Body to administer and enforce the provisions of this Ordinance, including the ordering in writing of the remedying of any condition found in violation of this Ordinance, and the bringing of legal action to ensure compliance with the Ordinance, including injunction, abatement, or other appropriate action or proceeding.
- 23-1-2        **ASSISTANCE AND COOPERATION.** The Zoning Administrator may request and shall receive, so far as may be necessary in the discharge of his duties, the assistance and cooperation of the Chief of Police in enforcing orders, of the City Attorney in prosecuting violations, and of other City officials.

#### **SECTION 23-2. INTERPRETATION.**

- 23-2-1        Unless district boundary lines are fixed by dimensions or otherwise clearly shown or described, and where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:
- 23-2-2        Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center lines or lines at right angles to such center lines shall be construed to be such boundaries, as the case may be.
- 23-2-3        Where a boundary is indicated to follow a river, creek, or branch or other body of water, said boundary shall be construed to follow the center line at low water or at the limits of the jurisdiction; and in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.

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- 23-2-4        If no distance, angle, curvature, description, or other means is given to determine a boundary lines accurately and the foregoing provisions do not apply, the same shall be determined by the use of the scale shown on said zoning map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals which shall determine the boundary.

### **SECTION 23-3.        ADMINISTRATIVE APPROVAL OF MODIFICATION OF DEVELOPMENT STANDARDS.**

Upon application by the property owner, the Administrator may grant a modification to reduce the following development standards to the extent listed for each of the standards: (9-13-05, TA-05-03, Ord. No. 026-2005)

- a. Reduction of Setback, yard lot area or lot width requirements: A maximum of ten percent of the requirement. However, this section shall not be used to modify the standards listed in section 18-9-2.
- b. Enlargement of permitted sign area. No such enlargement shall be granted in excess of ten (10) percent of the maximum permitted area.
- c. Repair or reconstruction of a nonconforming structure or a conforming structure devoted to a nonconforming use that is destroyed or damaged in any manner to the extent that the cost of reconstructing the structure shall exceed fifty (50) percent of the cost of reconstructing the entire structure.
- d. Reduction of the requirements for off-street parking. No such reduction shall be granted in excess of ten (10) percent of the requirement. (4-11-06, Case TA-06-01, Ord. No. 16-2006)
- e. Reduction of the separation of off-street parking areas from side or rear property lines or from site features more than six (6) inches above or below grade. No such reduction shall be granted in excess of ten (10) percent of the requirement.
- f. Repair and maintenance of any nonconforming structure or portion of a structure containing a nonconforming use. No such repair or maintenance shall be granted to an extent in excess of twenty-five (25) percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be.

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- 23-3-1 No such modification shall be authorized by the Administrator unless he/she finds: (9-13-05, TA-05-03, Ord. No. 026-2005)
- a. That the strict application of this Ordinance would produce a clearly demonstrable hardship.
  - b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  - c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- 23-3-2 Prior to the granting of an administrative approval of development standards, the applicant shall submit an application and an affidavit to the Administrator setting forth the reasons and the need for the modification. Once the application has been accepted, the Administrator shall give, or require the applicant to give, all adjoining property owners and Board of Zoning Appeals members written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. If any member of the Board of Zoning Appeals requests to forego this section, the subject application shall be heard by the Board of Zoning Appeals pursuant to Article 20 of the this Ordinance. The Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the Administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the Board of Zoning Appeals as provided by that section. Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court as provided by § 15.2-2314. (9-13-05, Case TA-05-03, Ord. No. 026-2005)

### **SECTION 23-4. EFFECTIVE DATE.**

The effective date of this Ordinance shall be from and after its passage and legal application, and its provision shall be in force thereafter until repealed. (Section renumbered 2-12-91)

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### **SECTION 23-5. SEVERABILITY.**

Should any section or provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so held to be unconstitutional or invalid. (Section renumbered 2-12-91)

### **SECTION 23-6. CONFLICTING ORDINANCES.**

All conflicting ordinances or parts thereof which are inconsistent with the provisions of this Ordinance are hereby repealed. This Zoning Ordinance of Winchester, Virginia, shall be effected at and after 12:01 a.m. April 14, 1976. (Section renumbered 2-12-91)

### **SECTION 23-7. ADVERTISEMENT OF PLANS, ORDINANCES; NOTICE TO ADJACENT PROPERTY OWNERS; NOTIFICATION SIGNS. (NEW SECTION ADOPTED 10-13-92, CASE #TA-92-02, ORD. NO. 016-92)**

- 23-7-1           Whenever a public hearing is required for any action outlined in this Ordinance, such public hearing shall be advertised as required by Section 15.2-2204 of the Code of Virginia (1950), as amended. The advertisement shall include a descriptive summary of the proposed action.
- 23-7-2           Whenever written notice to owners of affected or adjacent parcels is required for any action outlined in this Ordinance, such written notice shall be mailed by the applicant via first class mail at least ten days prior to the hearing to the owners of all properties within 300 feet of the property affected, except as provided below.
  - 23-7-2.1       Whenever a proposed amendment of the zoning ordinance involves a change in the zoning classification of twenty-five (25) or fewer parcels of land, written notice via registered or certified mail shall be mailed by the applicant at least ten days prior to hearing to all the owners of each parcel involved and to the owners of all abutting property and property immediately across the street or road from the property affected. Further, notice shall be mailed by the applicant via first class mail at least ten days prior to the hearing to the owners of all other properties within 300 feet of the property affected. If the hearing is continued, notice shall be remailed at the applicant's expense.
  - 23-7-2.2       Whenever a proposed amendment of the Zoning Map involves a change in the zoning classification more than twenty-five (25) but less than 500

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parcels of land, written notice via first class mail shall be given by the applicant at least five days prior to hearing to all the owners of each parcel involved and to the owners of all abutting property and property immediately across the street or road from the property affected. Further, notice shall be mailed by the applicant via first class mail at least ten days prior to the hearing to the owners of all other properties within 300 feet of the property affected.

- 23-7-2.3 In the case of a condominium, the written notice may be mailed to the unit owners' association in lieu of each individual unit owner. If any portion of the affected property is a planned unit development, then written notice shall be sent to such incorporated property owners association within the planned unit development that has members owning property located within two thousand (2000) feet of the affected property. Such notice shall be given whether the properties are located within or without the City. Reliance by the applicant upon records of the City Assessor's office to ascertain the names of persons entitled to notice shall be deemed sufficient. The applicant shall be required to supply the names and certify that the notice has been sent to those to whom notice has been required. The certification and a listing of the persons to whom the notice has been sent shall be supplied by the applicant to the Administrator at least five (5) days prior to the first hearing.
- 23-7-3 Whenever notification signage is required to be placed on the property for any action outlined in this Ordinance, such signage shall be placed so as to be visible from each existing developed street upon which the property fronts. The applicant shall submit a \$50.00 refundable deposit per sign and be responsible for the placement of such signs at least two weeks prior to the public hearing. Additional signs shall be placed by the applicant if the frontage exceeds 1,000 feet or if the property fronts on more than one street. The applicant shall return the sign(s) within ten (10) business days after the close of the public hearing. If the sign is not returned within ten (10) business days, the deposit shall be forfeited. (3-14-06, Case TA-05-07, Ord. No. 09-2006)

**SECTION 23-8. FEES.** (ORD. 029-99, 10-13-99, TA-99-04; ORD. 024-2002, 10-9-02, TA-02-07)

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23-8-1	Conditional Use (when applied for at same time as site plan) (10-8-02, Case TA-02-07, Ord. No. 024-2002)	\$200
	Conditional Use (when applied for separate from site plan) (10-8-02, Case TA-02-07, Ord. No. 024-2002)	\$500
23-8-2	Site Plans (8-16-02, Case TA-01-09, Ord. No. 002-2002; 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$1200 + \$25/provided parking and / or display space
23-8-3	Minor Site Plan Revision (10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$300 + \$25/provided parking and /or display space
23-8-4	BZA Applications/Appeals (8-16-02, Case TA-01-09, Ord. No. 002-2002; 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$500/1 <sup>st</sup> Code Section \$100/each Additional Code Section
23-8-5	Rezoning (8-16-02, Case TA-01-09, Ord. No. 002-2002 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$1000+\$200/acre or fraction thereof
23-8-5.1 through 23-8-5.3 (repealed 10-13-1999, TA-99-04, Ord. No. 029-99)		
23-8-5.4	Zoning Text Amendment (10-8-02, Case TA-02-07, Ord. No. 024-2002)	\$600
23-8-5.5	Conditional Zoning Proffer Amendment (Ord. 029-99, 10-13-99, TA-99-04) (10-8-02, Case TA-02-07, Ord. No. 024-2002)	\$500
23-8-6	Planned Development Re-approval/Revision (10-8-02, Case TA-02-07, Ord. No. 024-2002)	\$500
23-8-7	Re-advertisement Fee (10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$75

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23-8-8	BAR Demolition of 75 Year Old Structure (4-13-93, Case TA-93-03, Ord. No. 014-93) (10-8-02, Case TA-02-07, Ord. No. 024-2002)	\$300
23-8-9	Appeal to City Council of BAR decision (4-13-93, Case TA-93-03, Ord. No. 014-93; 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$75
23-8-10	Temporary permit Mobile home, office, or sales unit Mobile storage units (4-13-93, Case TA-93-03, Ord. No. 014-93; 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$100/unit \$200/unit
23-8-11	Event permit (4-13-93, Case TA-93-03, Ord. No. 014-93; 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$100
23-8-12	Portable sign or sign when no building permit is required (12-13-94, Case TA-94-10, Ord. No. 029-94) (10-8-02, Case TA-02-07, Ord. No. 024-2002)	\$40
23-8-13	Waiver of Underground Utilities (12-13-94, Case TA-94-11, Ord. No. 002-95; 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$100
23-8-14	Seasonal storage/display permit (10-17-95, Case TA-95-04, Ord. No. 053-95; 10-8-02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$250
23-8-15	Right of Way Vacation (Ord. 029-99, 10-13-99, TA-99-04)	\$100
23-8-16	Zoning Determination Letter (3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$100
23-8-17	Zoning Confirmation Letter (3-14-06, Case TA-05-07, Ord. No. 09-2006)	\$500

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### **23-9 PAYMENT OF DELINQUENT TAXES**

Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land use permit, or prior to the issuance of final approval, the applicant shall produce satisfactory evidence that any delinquent real estate taxes owed to the city which have been properly assessed against the subject property have been paid. (8-16-02, Case TA-02-04, Ord. No. 014-2002)

### **23-10 DISCLOSURE OF REAL PARTIES IN INTEREST**

All applications to the Planning Commission, City Council, or Board of Zoning Appeals for special exception, special use permits, conditional use permits, rezoning, amendments to the Zoning Ordinance or variances shall be accompanied by a complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the names of stockholders, officers and directors, and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers, and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. (8-16-02, Case TA-02-04, Ord. No. 014-2002)